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October 18, 1993

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

DELIVERY BY HAND

Renee Licht, Esquire
Acting General Counsel
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Letter of October 14, 1993 Regarding
Alleged Ex Parte Presentations in
CC Docket No. ~~92-28~~ and ET Docket No. 92-28

Dear Ms. Licht:

Loral Qualcomm Satellite Services, Inc. ("LQSS") and Motorola Satellite Communications, Inc. ("Motorola") hereby respond to the unfortunate and incorrect assertions made by TRW Inc., Constellation Communications, Inc. and Ellipsat Corporation in their letter referred to above regarding purported violations of the Commission's ex parte rules. The parties raising these matters have misinterpreted the Commission's ex parte rules and do not appear to understand the nature of the contacts made by Motorola and LQSS with the Commission staff. Accordingly, both the arguments and conclusions in that letter are incorrect.

Simply put, the contacts discussed in the letter were made in what are, at most, non-restricted proceedings, and written disclosures of those contacts were filed in accordance with the Commission's Rules. Moreover, no new facts or arguments concerning the signatories' applications were discussed, as they allege might have happened; the contacts only addressed the issues raised in the Joint Comments of LQSS and Motorola filed October 7, 1993. Finally, there is not one shred of factual evidence of prejudice to the three signatories in their letter which would justify issuance of an order to show cause, setting of a hearing, or disqualification of LQSS or Motorola from these proceedings, as the signatories request. Therefore, for the reasons discussed below, the Commission should dismiss their complaint forthwith as failing to raise any matter of concern.

Motorola and LQSS did not violate the Commission's Rules by explaining to the Commission staff the essential elements of their Joint Comments filed on October 7, 1993, in two related rulemaking proceedings. In those Joint Comments, LQSS and Motorola described an agreed-upon plan for sharing the RDSS/MSS spectrum with the current group of non-geostationary Mobile-Satellite Service ("MSS") applicants, including the three signatories to the letter. Because LQSS and Motorola view their

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agreement as a watershed event in these proceedings -- i.e., leading proponents of two competing multiple access technologies (FDMA/TDMA and CDMA spread spectrum) have, for the first time, agreed upon an approach to sharing spectrum -- we believed it important that the Commission staff fully understand the sharing plan.

As the parties now complaining about Motorola's and LQSS' contacts with Commission staff have conceded, the two rulemaking proceedings in which the Joint Comments were filed could, at most, be construed as non-restricted proceedings under the Commission's ex parte rules.^{1/} Therefore, oral and written ex parte presentations are permitted so long as the fact of such contacts are disclosed.^{2/} Although, in the absence of a Notice of Proposed Rule Making in CC Docket No. 92-166, the ex parte rules could fairly be read not to apply to RDSS/MSS service and licensing rules, nonetheless, LQSS and Motorola filed disclosure statements for this proceeding as well.^{3/}

^{1/} See 47 C.F.R. § 1.1206(b)(1). The Commission specifically identified ET Docket No. 92-28 as a non-restricted proceeding. See Amendment of Section 2.106 of the Commission's Rules to Allocate the 1610-1626.5 MHz and the 2483.5-2500 MHz Bands for Use by the Mobile-Satellite Services, including Non-Geostationary Satellites, 7 FCC Rcd. 6414, 6422, ¶ 54 (1992). While the decisions on the various applicants' pioneer's preference requests were deemed restricted, id. at 6422, ¶ 55, there was no discussion of these requests in the Joint Comments or during the contacts with Commission staff. The Commission did not include an ex parte notice in the Notices released regarding CC Docket No. 92-166. See Establishment of an Advisory Committee to Negotiate Proposed Regulations, 7 FCC Rcd. 5241 (1992), and 7 FCC Rcd. 8614 (1992).

^{2/} In accordance with Section 1.1206 of the Commission's Rules, LQSS and Motorola filed disclosure statements in both ET Docket No. 92-28 and CC Docket No. 92-166. Copies of these statements are enclosed with this letter.

^{3/} Since the ex parte rules only define an informal rulemaking proceeding as non-restricted upon adoption of a notice of proposed rulemaking (see 47 C.F.R. § 1.1208(b)(1)), and since the Commission has not adopted, as of this date, a Notice of Proposed Rulemaking in CC Docket No. 92-166, the ex parte rules do not apply as to any communications relating to proposed service and licensing rules for MSS systems. The current status of this

(continued...)

Having mistaken the facts and misread the rules, these signatories can only claim that the contacts with staff were wrong because, in the signatories' view, some of the issues raised in the Joint Comments are "inextricably related" to the merits of the pending "restricted" application proceedings, and thereby are prohibited under the ex parte rules. To the contrary, the Joint Comments of Motorola and LQSS are directed solely to the licensing and service rules that the Commission has indicated are essential before any decisions are made on the pending MSS applications.^{4/} In fact, the Joint Comments address the proposals and recommendations included in the "Report of the MSS Above 1 GHz Negotiated Rulemaking Committee" (April 6, 1993) in CC Docket No. 92-166. At no time in meetings with Commission staff did either Motorola or LQSS direct any arguments or communications to "the merits or outcome" of the pending MSS applications. See 47 C.F.R. § 1.1202(a). It should be noted that ex parte presentations have been specifically authorized in analogous proceedings in the satellite area when the Commission has simultaneously processed applications and considered the adoption of service and licensing rules in order to expedite service to the public. See, e.g., Amendment of Parts 2, 22 and 25 of the Commission's Rules to Allocate Spectrum for and to Establish Other Rules and Policies Pertaining to the Mobile Satellite Service for the Provision of Various Common Carrier Services, Tentative Decision, 6 F.C.C. Rcd. 4900 (1991), Notice of Proposed Rulemaking, 50 Fed. Reg. 8149 (1985); Amendment of the Commission's Rules to Allocate Spectrum for, and to Establish other Rules and Policies Pertaining to, a Radiodetermination Satellite Service, Notice of Proposed Rulemaking, 49 Fed. Reg. 36512 (1984); Establishment of Separate Systems Providing

^{3/} (...continued)
rulemaking proceeding is analogous to those instances where there is a pending petition for rulemaking or where the Commission has adopted a notice of inquiry. See 47 C.F.R. § 1.1204(a)(2) & (4).

^{4/} The Commission has repeatedly noted that it applies the exception for "competing claims to a valuable privilege" primarily to rulemaking proceedings involving changes to the FM and TV Tables of Allotments. See Amendment of Ex Parte Rules, 2 FCC Rcd. 3011, 3031 n. 30; Policies and Procedures Regarding Ex Parte Communications, 47 RR 2d 1213, 1221 (1980); see also 47 C.F.R. § 1.1208(c)(2) (noting that a rulemaking involving FM and TV Tables of Allotments is a restricted proceeding and citing Sangamon Valley Television Corp. v. United States, 269 F.2d 221 (D.C. Cir. 1969)).

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International Communications, Notice of Proposed Rulemaking, 50
Fed. Reg. 1570 (1985).

The three signatories have cited to no facts or law to suggest that they have suffered any harm by the referenced contacts, relying instead on rhetoric in their claim that these proceedings have been somehow tainted. See Centel Corp., FCC 93-397, at 2-3 (released Aug. 24, 1993) (denying application for review based on alleged violations of ex parte rules where complainant failed to demonstrate prejudice). Indeed, all three signatories of the October 14, 1993 letter had previously seen drafts of the Joint Comments before they were filed (in which their participation had been invited), and were informed that the spectrum sharing plan described therein would be explained further to the Commission. Thus, the complaining signatories cannot now claim that they were unaware of our intentions. Therefore, the three signatories were not denied the notice which the ex parte rules are designed to address. See 47 C.F.R. § 1.1200(a) (ex parte rules are designed to "ensure that the Commission's decisional processes are fair, impartial, and otherwise comport with the concept of due process"); cf. Redwood Microwave Assoc., Inc., 38 RR 2d 1073, 1081 (1976) (complainant failed to establish that ex parte rules applied or that contacts resulted in denial of due process or an unfair consideration of the merits of the subject applications). There is then simply no basis for instituting a hearing or show cause proceeding.^{5/}

We trust that this letter clarifies the matters raised by the signatories to the October 14, 1993 letter, and puts to rest any question as to the propriety of the joint presentations made by Motorola and LQSS to the Commission staff. We do not believe that it would be in the public interest to bar ex parte contacts in the above-referenced rulemaking proceedings as urged by the other applicants. The Commission staff should be allowed to benefit from such presentations as it deliberates on the service and licensing rules relating to the provision of MSS in the relevant frequency bands. Indeed, the Commission has

^{5/} In a previous filing, Motorola noted that LQSS had met with Commission staff to discuss its views of the negotiated rulemaking. However, Motorola did not then, and does not now claim that LQSS had somehow violated the ex parte rules as a result of that meeting. As is clear from a reading of Motorola's earlier pleading, Motorola was merely placing in context its own filing which expressed its views on the results of the negotiated rulemaking proceeding.

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recognized that its ex parte rules, which permit contacts with staff in non-restricted proceedings, "are designed to allow the Commission sufficient flexibility to obtain all the information and evidence necessary for reasoned decision-making." Amendment of Ex Parte Rules, 2 FCC Rcd. at 3012. The task at hand is to get RDSS/MSS services to the public promptly. To this end, LQSS and Motorola continue to be ready to work with the other applicants and with the Commission staff.^{6/}

Respectfully submitted,

MOTOROLA SATELLITE
COMMUNICATIONS, INC.



Philip L. Malet
Alfred Mamlet
Steptoe & Johnson
1330 Connecticut Ave., N.W.
Washington, D.C. 20036
(202) 429-6239

LORAL QUALCOMM SATELLITE
SERVICES, INC.



Dale Gallimore
Counsel
Loral Qualcomm Satellite
Services, Inc.
7375 Executive Place
Suite 101
Seabrook, MD 20706
(301) 805-0373

Enclosures

^{6/} Should the circumstances indicate that it would be appropriate or should you request it, LQSS and Motorola will provide a memorandum of additional points and authorities on the appropriateness of their contacts with the Commission staff. In the interest of providing a very prompt response to the letter of October 14, 1993, this letter has been furnished for your consideration.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS
COMMISSION
SECRETARY

In the Matters of:

Amendment of the Commission's
Rules to Establish Rules and
Policies Pertaining to Mobile-
Satellite Service and Radio
Determination Satellite Service
in the 1610-1626.5 MHz and
2483.5-2500 MHz Bands; and

CC Docket No. 92-166

Amendment of Section 2.106 of
the Commission's Rules to
Allocate the 1610-1626.5 MHz
and the 2483.5-2500 MHz Bands
for Use by the Mobile-Satellite
Service, Including Non-
Geostationary Satellites.

ET Docket No. 92-28

EX PARTE PRESENTATIONS

Pursuant to Section 1.1206 of the Commission's rules and regulations, Motorola Satellite Communications, Inc. ("Motorola") and Loral Qualcomm Satellite Services, Inc. ("LQSS") hereby report that ex parte presentations were jointly made by representatives of Motorola and LQSS on October 8 & 12, 1993, to the persons identified on the attached list. The subject matter and materials discussed during these presentations related to the Joint Comments filed by the parties with the Commission in the above-captioned proceedings on October 7, 1993.

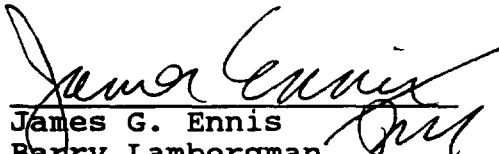
Copies of this ex parte notice are being sent to the persons identified on the attached list.

Respectfully submitted,

MOTOROLA SATELLITE
COMMUNICATIONS, INC.



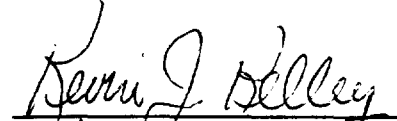
Philip L. Malet
Alfred Mamlet
Pantelis Michalopoulos
Steptoe & Johnson
1330 Connecticut Ave., N.W.
Washington, D.C. 20036
(202) 429-6239



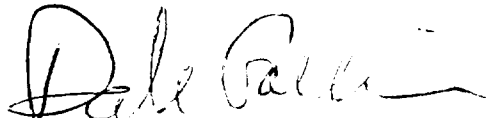
James G. Ennis
Barry Lambergman
Fletcher Heald & Hildreth
1300 North 17th Street
11th Floor
Rosslyn, VA 22209
(703) 812-0400

Michael D. Kennedy
Director, Regulatory Relations
Motorola Inc.
1350 I Street, N.W.
Suite 400
Washington, D.C. 20005
(202) 371-6900

LORAL QUALCOMM SATELLITE
SERVICES, INC.



Kevin J. Kelley
Vice President -
External Affairs
Qualcomm, Inc.
1233 20th Street, N.W.
Suite 202
Washington, D.C. 20036
(202) 223-1720



Dale Gallimore
Counsel
Loral Qualcomm Satellite
Services, Inc.
7375 Executive Place
Suite 101
Seabrook, MD 20706
(301) 805-0373

Dated: October 8, 1993

List of Persons Attending Presentations

Brian Fontes Chairman Quello's Office	2:00 pm (Friday)
Byron Marchant Commissioner Barrett's Office	2:30 pm
Thomas P. Stanley (and staff) Chief Engineer	3:15 pm
James R. Keegan Chief, Domestic Facilities Division Common Carrier Bureau	9:30 am
Cecily C. Holiday Chief, Satellite Radio Branch Common Carrier Bureau	9:30 am
Fern J. Jarmulnek Satellite Radio Branch Common Carrier Bureau	9:30 am
Randy Coleman Commissioner Duggan's Office	2:00 pm (Tuesday)

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matters of:

Amendment of the Commission's
Rules to Establish Rules and
Policies Pertaining to Mobile-
Satellite Service and Radio
Determination Satellite Service
in the 1610-1626.5 MHz and
2483.5-2500 MHz Bands; and

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Geostationary Satellites.

CC Docket No. 92-166

ET Docket No. 92-28

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

EX PARTE PRESENTATIONS

Pursuant to Section 1.1206 of the Commission's rules and regulations, Motorola Satellite Communications, Inc. ("Motorola") and Loral Qualcomm Satellite Services, Inc. ("LQSS") hereby report that a presentation was jointly made by representatives of Motorola and LQSS on October 15, 1993, to Jonathan Cohen in Chairman Quello's office. The subject matter and materials discussed during these presentations related to the Joint Comments filed by the parties with the Commission in the above-captioned proceedings on October 7, 1993.

Copies of this notice are being sent Mr. Cohen.

Respectfully submitted,

MOTOROLA SATELLITE
COMMUNICATIONS, INC.

LORAL QUALCOMM SATELLITE
SERVICES, INC.



Philip L. Malet
Alfred Mamlet
Pantelis Michalopoulos
Steptoe & Johnson
1330 Connecticut Ave., N.W.
Washington, D.C. 20036
(202) 429-6239



Kevin J. Kelley
Vice President -
External Affairs
Qualcomm, Inc.
1233 20th Street, N.W.
Suite 202
Washington, D.C. 20036
(202) 223-1720



James G. Ennis
Barry Lamberman
Fletcher Heald & Hildreth
1300 North 17th Street
11th Floor
Rosslyn, VA 22209
(703) 812-0400



Dale Gallimore
Counsel
Loral Qualcomm Satellite
Services, Inc.
7375 Executive Place
Suite 101
Seabrook, MD 20706
(301) 805-0373

Michael D. Kennedy
Director, Regulatory Relations
Motorola Inc.
1350 I Street, N.W.
Suite 400
Washington, D.C. 20005
(202) 371-6900

Dated: October 8, 1993

CERTIFICATE OF SERVICE

I, Philip L. Malet, hereby certify that the foregoing Letter was served by first-class mail, postage prepaid, this 18th day of October, 1993 on the following persons:

- * Chairman James H. Quello
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554
- * Commissioner Andrew C. Barrett
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 10554
- * Commissioner Ervin S. Duggan
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554
- * Thomas P. Stanley
Chief Engineer
Federal Communications Commission
2025 M Street, N.W.
Room 7002
Washington, D.C. 20554
- * Raymond LaForge
Federal Communications Commission
Room 7334
2025 M Street, N.W.
Washington, D.C. 20554
- * Kathleen B. Levitz
Acting Chief, Common Carrier Bureau
Federal Communications Commission
Room 500
1919 M Street, N.W.
Washington, D.C. 20554
- * Gerald P. Vaughan
Deputy Bureau Chief (Operations)
Federal Communications Commission
Room 500
1919 M Street, N.W.
Washington, D.C. 20554

- * Wendell R. Harris
Assistant Bureau Chief
Common Carrier Bureau
Federal Communications Commission
Room 534
1919 M Street, N.W.
Washington, D.C. 20554
- * James R. Keegan
Chief, Domestic Facilities Division
Common Carrier Bureau
Federal Communications Commission
2025 M Street, NW, Room 6010
Washington, DC 20554
- * Thomas Tycz
Deputy Chief
Domestic Facilities Division
Common Carrier Bureau
Federal Communications Commission
Room 6010
2025 M Street, N.W.
Washington, D.C. 20554
- * Cecily C. Holiday
Chief, Satellite Radio Branch
Federal Communications Commission
Room 6324
2025 M Street, N.W.
Washington, D.C. 20554
- * Fern J. Jarmulnek
Satellite Radio Branch
Federal Communications Commission
2025 M Street, NW, Room 6324
Washington, DC 20554
- * James Ball
Associate Director
Office of International Communications
Federal Communications Commission
Room 658
1919 M Street, N.W.
Washington, D.C. 20554

Mr. Richard C. Beaird
Senior Deputy U.S. Coordinator
and Director
Bureau of International Communications
and Information Policy
Room 6313
Department of State
2201 C Street, NW
Washington, D.C. 20520

Mr. Michael Fitch
Deputy U.S. Coordinator and Director
Bureau of International Communications
and Information Policy
Room 6313
Department of State
2201 C Street, NW
Washington, D.C. 20520

Mr. Lawrence Irving
Assistant Secretary for
Communications and Information
NTIA
U.S. Department of Commerce
14th & Constitution Ave., NW
Room 4898
Washington, DC 20230

Ms. Jean Prewitt
Associate Administrator
NTIA/OIA
U.S. Department of Commerce
14th & Constitution Ave., NW
Room 4720
Washington, DC 20230

Mr. Jack A. Gleason
Division Director
NTIA/OIA
U.S. Department of Commerce
14th & Constitution Ave., NW
Room 4701
Washington, DC 20230

Richard D. Parlow
Associate Administrator
Office of Spectrum Management
NTIA
U.S. Department of Commerce
14th & Constitution Ave., NW
Washington, DC 20230

William Hatch
NTIA, Room 4096
U.S. Department of Commerce
14th & Constitution Ave., NW
Washington, DC 20230

Richard Barth
Director
Office of Radio Frequency Management
National Oceanic and
Atmospheric Administration
U.S. Department of Commerce
Room 3332
Federal Office Bldg. #4
Washington, D.C. 20233

Mr. Craig Moll
Telecommunications Policy Specialist
NTIA/OIA
U.S. Department of Commerce
14th & Constitution Ave., NW
Room 4701
Washington, DC 20230

Warren Y. Zeger
General Counsel
COMSAT Corp.
6560 Rock Spring Dr.
Bethesda, MD 20817

Cheryl Lynn Schneider, Esquire
COMSAT Corp.
6560 Rock Spring Dr.
Bethesda, MD 20817

Bruce D. Jacobs, Esquire
Glenn S. Richards, Esquire
Fisher, Wayland, Cooper & Leader
1255 23rd Street, N.W.
Suite 800
Washington, D.C. 20037
(Counsel for AMSC)

Lon C. Levin
Vice President
American Mobile Satellite Corp.
10802 Parkridge Blvd.
Reston, VA 22091

Robert A. Mazer, Esquire
Albert Shuldiner, Esquire
Nixon, Hargrave, Devans & Doyle
One Thomas Circle, NW, Suite 800
Washington, DC 20005
(Counsel for Constellation)

Norman R. Leventhal, Esquire
Raul R. Rodriguez, Esquire
Stephen D. Baruch, Esquire
Leventhal, Senter & Lerman
2000 K Street, N.W.
Suite 600
Washington, D.C. 20006-1809
(Counsel for TRW, Inc.)

Jill Stern, Esquire
Shaw, Pittman, Potts & Trowbridge
2300 N Street, N.W.
Second Floor
Washington, D.C. 20037
(Counsel for Ellipsat)

Gerald Hellman
Vice President, Policy
& International Programs
Mobile Communications Holdings, Inc.
1120 19th Street, N.W.
Washington, D.C. 20036

Victor J. Toth, P.C.
Law Offices
2719 Soapstone Drive
Reston, VA 22091
(Counsel for Celsat, Inc.)

Dr. Robert L. Riemer
Committee on Radio Frequencies
HA-562
National Research Council
2101 Constitution Ave., N.W.
Washington, D.C. 20418

Richard G. Gould
Telecommunications Systems
1629 K Street, N.W.
Suite 600
Washington, D.C. 20006

John L. Bartlett
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006
(Counsel for ARINC/ATA)

Gary M. Epstein
James F. Rogers
Kevin C. Boyle
Latham & Watkins
1001 Pennsylvania Avenue, N.W.
Suite 1300
Washington, D.C. 20004
(Counsel for Hughes Aircraft)

Edward R. Adelson
Vice President
Industry Activities
Aeronautical Radio, Inc.
2551 Riva Road
Annapolis, MD 21401-7465

Abdul Tahir
Director, GPS Deveoplment
Litton Systems, Inc.
6101 Condor Drive
Moorpark, CA 93021

Linda C. Sadler
Manager, Government Affairs
Rockwell International Corp.
1745 Jefferson Davis Highway
Arlington, VA 22202

Guy M. Gooch
Director, Systems Engineering
Mobile Communications Satellite Systems
Rockwell International Corp.
400 Collins Road, NE
Cedar Rapids, IA 52498

Paul J. Sinderbrand, Esquire
Dawn G. Alexander, Esquire
Sinderbrand & Alexander
888 16th Street, N.W.
Suite 610
Washington, DC 20006-4103
(Counsel for Wireless Cable
Association International, Inc.)

Robert A. Frazier
Spectrum Engineering & Planning
Division - ASM-500
Federal Aviation Administration
800 Independence Avenue, S.W.
Washington, D.C. 20591

B. E. Morriss
Deputy Manager
National Communications System
Washington, D.C. 20305-2010

R. A. Davis
Vice President, Engineering
Boeing Commercial Airplane Group
P.O. Box 3703, MS GR-UT
Seattle, WA 98124-2207

David Struba
NASA Headquarters
Code OI
Washington, D.C. 20546

William K. Keane, Esq.
Winston & Strawn
1400 L Street, N.W.
Washington, D.C. 20005
(Counsel for AFTRCC)

Jeffrey L. Sheldon
General Counsel
Utilities Telecommunications Council
1140 Connecticut Ave., N.W., Suite 1140
Washington, D.C. 20036

Arun Bhumitra
Vice President
ARJAY Telecommunications
20669 Hawthorne Blvd.
Torrance, CA 90503

M. Worstell
Vice President, Contracts
Litton Aero Products
6101 Condor Drive
Moorpark, CA 93021

J. Ellis McSparran
3S Navigation
23141 Plaza Pointe Drive
Laguna Hills, CA 92653

Thomas Trimmer
U.S. Army
Hoffman II
Room 9S65
200 Stovall Street
Alexandria, VA 22332

E. William Henry
Henry M. Rivera
Ginsburg, Feldman and Bress
Chartered
1250 Connecticut Ave., N.W.
Washington, D.C. 20036
(Counsel for RDSS Inc.)

Bruce L. Bucklin
Acting Chief
Technical Operations Section
Drug Enforcement Administration
U.S. Department of Justice
Washington, D.C. 20537

Terri B. Natoli
Regulatory and Industry
Relations Manager
GTE Spacenet
1700 Old Meadow Road
McLean, VA 22102

Tedson J. Myers
Reid & Priest
701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(Counsel for AfriSpace, Inc.)


Philip L. Malet

* Delivery by hand.